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Supreme Court, U.S.
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No. 02-1736

In The

Supreme Court of the United States

JAMES B. TWISDALE,

Petitioner

v.

JOHN W. SNOW, Secretary of the Treasury,

Respondent

On Writ of Certiorari to the
Untied States Court of Appeals
For the Seventh Circuit

SUPPLEMENTAL APPENDIX

JAMES B. TWISDALE
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304-757-4738
August 23, 2003

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JAMES B. TWISDALE, Plaintiff, —	)	
	)	IP 00-860-C-Y/F
vs.	)	
PAUL H. O'NEILL, Secretary of the United States Department of the Treasury, Defendant.	)	

ENTRY ON DEFENDANTS MOTION FOR SUMMARY JUDGMENT

Plaintiff James B. Twisdale ("Twisdale") has been an employee of the Internal Revenue Service ("IRS") since 1981. He alleges in his Complaint that has been the subject of employment discrimination; in particular, he alleges a hostile working environment and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 200e et seq. The Defendant herein, Paul H. O'Neill, Secretary of the United States Department of the Treasury ("Defendant"), now moves for summary judgment. For the reasons set forth below, the court GRANTS said motion.

I. Summary Judgment Standard

A party is entitled to summary judgment "if the Pleadings, answers to Interrogatories, and admissions on file, together

with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56©. The record and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. National Soffit & Escutcheons, Inc. v. Superior Sys., Inc., 98 F.3d 262, 264 (7th Cir.1996).

The moving party bears the burden of demonstrating the absence of a triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The burden may be met by demonstrating "that there is an absence of evidence to support the nonmoving party's case." Id. At 325. If the moving party meets its burden, the adverse party "may not rest upon the mere allegations or denials of the adverse party's pleading," but must present specific facts to show that there is a genuine issue of material fact. Fed. R. Civ. P. 56(e); see also National Soffit, 98 F.3d at 265 (citing Hughes v. Joliet Correctional Center, 931 F.2d 425, 428 (7th Cir. 1991)).

II. Facts

A. Twisdale's Initial Employment with the IRS in Indianapolis

1. Twisdale, a white male, began working for the IRS in 1981, and in 1994 the IRS laterally promoted Twisdale to a position in Indianapolis as a Chief of Examination Branch II. (Deposition of James B. Twisdale ("Twisdale Dep."), Vol. I, at 25).
2. In this position, Twisdale was in charge of a field branch, and would conduct operation reviews that included reviewing records, assessing managers' success in certain programs, and providing information to a regional or national IRS office. (Twisdale Dep., Vol. I, at 49).

3. Barry Whaley ("Whaley"), a white male, was Twisdale's supervisor during this time. (Twisdale Dep., Vol. 1, at 45).
4. In 1996, due to a reorganization, Twisdale was laterally reassigned to Chief, Quality Measurement Branch ("QMB") in Indianapolis. (Twisdale Dep., Vol. I, at 46, 58).
5. As a QMB Chief, Twisdale's responsibilities included reviewing cases for quality and technical accuracy. (Twisdale Dep., Vol. I, at 54).
6. Whaley continued to supervise Twisdale during this time. (Twisdale Dep., Vol. I, at 54-55).
7. During January and February 1997, Twisdale took a detail assignment to review appeal cases. (Twisdale Dep., Vol. I, at 64).
8. In this position, Twisdale reviewed appeal officers' reports and recommendations regarding taxpayer appeals. In addition, he did workload reviews, provided advice to employees, and technical assistance and research. (Twisdale Dep., Vol I, at 69- 70).

B. Twisdale's Involvement with Barry Madison

9. In March of 1997, Twisdale supervised Barry Madison ("Madison"), a black female GS-11 disclosure specialist (Twisdale Dep., Vol. I, at 70, 75).
10. Madison was married to Everett Madison ("E. Madison"), a black male, who was the Chief of Collections for the IRS in Indianapolis. (Twisdale Dep., Vol. I, at 70, 78-79).
11. Twisdale believes that Madison's performance review at that time was "fully Successful," although he is not sure. (Twisdale Dep., Vol. I, at 73).
12. Following his detail to appeals, Twisdale returned to his position of QM B Chief, and upon Whaley's suggestion, Madison began working for Twisdale as a disclosure specialist. (Twisdale Dep., Vol. I, at 75-76).

13. Madison's immediate supervisor in this position was Disclosure Officer Mary Lue Graham ("Graham"). (Twisdale Dep., Vol. I, at 82).
14. On one occasion, Graham wanted to give Madison a rating less than fully satisfactory. (Twisdale Dep., Vol. I, at 84).
15. However, Twisdale felt that Madison had been reassigned to a job for which she had no training, and that the IRS had an obligation to teach her how to perform her new job. (Twisdale Dep., Vol. I, at 80-81).
16. Accordingly, Twisdale instructed Graham not to rate Madison less than fully satisfactory, even though Twisdale felt that such a rating was not an accurate assessment of her performance. (Twisdale Dep., Vol. I, at 84).
17. Twisdale is not aware of Madison ever being disciplined by the IRS or rated below "fully satisfactory." (Twisdale Dep., Vol. I, at 73, 75).
18. From February through July of 1998, Twisdale initiated approximately four to five meetings with Graham, Madison, Disclosure Assistant Vicki Reynolds ("Reynolds"), and himself to ease the tension in the disclosure group. (Twisdale Dep., Vol. I, at 98-100).
19. Twisdale would compliment Graham, Reynolds, and Madison on their work. (Twisdale Dep., Vol. I, at 100-01).
20. The IRS sent Madison to various disclosure and related training courses. (Twisdale Dep., Vol. I, at 101).
21. The IRS assigned Madison shortly after she received this training, but Twisdale is unaware of any documented performance problems with Madison after she received this training. (Twisdale Dep., Vol. I, at 101-03).
22. On November 7, 1997, Madison contacted EEO Counselor David Diffenbach ("Diffenbach") and alleged that her annual performance evaluation, which rated her at the "3" level instead of the "4" level, did not adequately reflect her accomplishments and

discriminated against her based on her sex and race. Because Twisdale was the supervisor of the Disclosure Office, he was implicitly named as an offending party. (Twisdale Dep., Vol. I, at 112-14; Ex. 21).

23. A "3" rating means the employee is meeting all her critical elements and that she is doing her job. (Deposition of Jim Rogers ("Rogers Dep.") at 154).
24. Twisdale met with Diffenbach in an effort to resolve the matter. (Twisdale Dep.,Vol. I, at 116).
25. Twisdale proposed, after cousulting with Labor Relations Specialist Elaine Rogers ("E. Rogers"), EEO Officer Deborah Greene ("Greene") and Graham, that two of Madison's performance levels be raised from "3s" to "4s" to give her back pay for her acting assignment as a disclosure officer for two weeks, and to subject her to a desk audit to see if she was performing a higher grade level of work. (Twisdale Dep., Vol. I, at 117).
26. Otis Damron ("Damron"), a white male who served as Acting Examination Division Chief, took over the negotiations and reached an EEO settlement withMadison after Twisdale was unable to do so. (Twisdale Dep., Vol. I, at 129-30).
27. District Director James Rogers ("Rogers"), a black male, agreed to sign off on a resolution which granted all of Madison's demands.
28. Rogers and wife engaged in a social relationship with the Madisons. (Twisdale Dep., Vol, I, at 126; Rogers Dep. At 62-63).
29. Rogers testified, however, that the Madisons did not ask him to interfere or intervene. (Rogers Dep. At 67).
30. Rogers does not recall making any suggestions relative to Madison's EEO settlement, although he does recall some discussion about performing a desk audit. (Rogers Dep. At 150-51).
31. Madison's EEO complaint was resolved on April 3, 1998. (Twisdale Dep., Vol I, at 131).

32. Twisdale did communicate verbally with the EEO officials. (Twisdale Dep., Vol. I, at 198-99).
33. However, Twisdale did not provide a written statement or affidavit to the EEOCounselor regarding Madison's complaint, nor did he attend any hearing. (Twisdale Dep., Vol. I, at 198).
34. On February 2, 1998, Whaley instructed Twisdale to initiate an administrative investigation as to whether Madison violated time and attendance policies, had an improper social relationship with Rogers, and engages in other misconduct. (Twisdale Dep., Vol. I, at 137-38; Ex. 23).
35. On February 10, 1998, Twisdale interviewed Madison relative to the inspector's referral. (Twisdale Dep., Vol. I, at 143-44).
36. The meeting lasted an hour to an hour and a half. (Twisdale Dep., Vol I, at 147).
37. Twisdale did not give Madison the opportunity to have another employee present during the meeting. (Twisdale Dep., Vol. I, at 147).
38. Madison was nervous, apprehensive, and defensive. (Twisdale Dep., Vol. I, at 147-49).
39. Twisdale does not recall how the meeting ended but Madison became upset. He may have terminated the meeting at that point in an effort to let her calm down. (Twisdale Dep., Vol. I, at 149).
40. Twisdale believes that Madison was likely concerned about her job when she left the meeting with him. (Twisdale Dep., Vol. I, at 158).
41. Later in the day on February 10, Rogers summoned Twisdale, Whaley, Assistant Director Gayle Morin ("Morin"), EEO Officer Greene, Labor Relations Specialist E. Rogers, and Chuck Fisher ("Fisher") to his office for a meeting relative to Madison's complaints about Twisdale. (Twisdale Dep., Vol. I, at 143-44, 151-53; Ex. 22).

42. Rogers asked Twisdale what he learned thus far in this investigation. (Twisdale Dep., Vol. I, at 161).
43. Twisdale prepared a contemporaneous memo concerning what transpired during this meeting. (Twisdale Dep., Vol. I, at 166-67; Ex. 22).
44. Rogers never instructed Twisdale to terminate his investigation of Madison even though he had the authority to do so. (Twisdale Dep., Vol. I, at 168-69).
45. In fact, on February 11, 1998, Morin called a meeting with Whaley and Twisdale and clarified that Twisdale was to continue with the investigation and take any necessary actions. (Twisdale Dep., Vol. I, at 169-70; Ex. 24).
46. Twisdale prepared a report concerning his investigation into Madison's alleged Misconduct. (Twisdale Dep., Vol. I, at 172-73; Ex. 23).
47. Twisdale stated in his report that he found no evidence of time and attendance Violations. (Ex. 23, at 1).
48. Twisdale's report also noted that while there was a perception of a conflict of interest, no conflict actually existed. (Twisdale Dep., Vol. I, at 174-75; Twisdale Dep., Vol II, at 169; Ex. 23).
49. Twisdale also examined whether a conflict existed such that Madison should not be allowed to give speeches to collection employees who worked for Madison's husband, E. Madison, but Twisdale did not believe a conflict existed. (Twisdale Dep., Vol. I, at 175-76; Twisdale Dep., Vol. II, at 169-70; Ex. 23).
50. Twisdale also investigated a yelling incident between Madison and Reynolds, and found that the arguments between the employees had subsided. (Twisdale Dep., Vol. I, at 177; Ex. 23).
51. In addition, Twisdale investigated Madison's alleged social relationship with Rogers and found no wrongdoing on Madison's part. (Twisdale Dep., Vol. I, at 178-79; Ex. 23).

52. Further, Twisdale investigated whether Madison had improperly used her husband's parking space to park in the basement of the Federal Building. (Ex. 23).
53. Based on Madison's position and rank she was not eligible to park in the basement. (Twisdale Dep., Vol. II, at 171).
54. According to Twisdale, Madison initially denied that she had parked in this parking space, but admitted doing so during a second interview with him. (Twisdale Dep., Vol. II, at 173, 215; Fxhs. 23, 25).
55. Madison denies ever telling Twisdale that she did not park in the basement in the First interview. (Twisdale Dep., Vol. I, at 180, 189; (Twisdale Dep., Vol. II, at 173, 215).
56. As a result of this incident, as well as allegedly lying to the U.S. Attorney's Office for the Northern District of Indiana, Twisdale issued Madison a counseling memorandum. (Twisdale Dep., Vol. I, at 180-81; Twisdale Dep., Vol. II, at 173-74: Ex. 25).
57. Madison experienced no loss of pay, time off work, or denial of promotion as a Result of the counseling memorandum. (Twisdale Dep., Vol. I, at 190).
58. Twisdale felt the counseling memorandum was a appropriate course of action, and did not propose more serious action. (Twisdale Dep., Vol. I, at 191-92, 194).
59. As a result of the counseling memorandum, Madison filed an agency grievance seeking $25,000 and the removal of the counseling memorandum. (Twisdale Dep., Vol. I, at 192).
60. Mary Murphy ("Murphy"), who became Chief of the Examination Division beginning in June of 1998, subsequently instructed Twisdale to remove the counseling memorandum from Madison's personnel file to resolve the grievance. (Twisdale Dep., Vol. I, at 193, 195-96).
61. Murphy is a black female. (Twisdale Dep., Vol. I, at 63).

C. Employee Reassignment From and Review of the Disclosure Office

62. Prior to becoming District Director, Rogers served as an IRS Assistant to the Deputy Commissioner, and in this capacity was very much involved in taxpayer disclosure issues. (Twisdale Dep., Vol. I, at 226-27; Ex. 29).
63. Rogers attended a meeting in January 1998 in Albuquerque, New Mexico and the issue of disclosure and agency exposure to the possibility of liability because of improper disclosure was discussed in great detail. (Twisdale Dep., Vol. I, at 228; Ex. 29).
64. Improper disclosure of taxpayer information could subject the IRS to liability. (Twisdale Dep., Vol. I, at 228-29).
65. During this training, Rogers indicated to Linda Stiff ("Stiff"), Acting Chief of Staff for the Commissioner, that he was considering inviting Internal Audit to Review his disclosure program. (Twisdale Dep., Vol. I, at 232; Ex. 30).
66. According to Twisdale's own time line of EEO events, Twisdale's first meeting with the EEO Counselor Diffenbach concerning Madison's complaint occurred on January 27, 1998. (Twisdale Dep., Vol, I, at 237; Ex. 32).
67. Accordingly, Rogers had expressed a desire to conduct an internal audit of the disclosure program prior to any involvement by Twisdale in Madison's EEO matter. (Exhs. 30, 32, 33).
68. On March 11, 1998, Damron met with Twisdale and told him that he had received a directive by Rogers to reassign three employees of the disclosure office and that Morin had instructed him to do a performance review of the disclosure office, despite the fact that a performance review had recently been completed and there were no negative findings. (Twisdale Dep., Vol. I, at 205, 210: Twisdale Dep.,Vol. II, at 165-66).

69. However, the employees were never reassigned nor was any action taken to Facilitate a possible reassignment. (Twisdale Dep., Vol. I, at 205).
70. Twisdale was not harmed by the proposed reassignment. (Twisdale Dep., Vol. 1, At 205).
71. On April 10, 1998, Twisdale was called into Damron's office, and introduced to IRS internal revenue officers, and told that the auditors were going to review the Disclosure office and check for internal controls in violation of the Privacy Act. (Twisdale Dep., Vol I, at 211-12).
72. Twisdale's role in the internal audit was to provide the auditors with information Necessary to complete the audit. (Twisdale Dep., Vol. I, at 211).
73. Twisdale asked Murphy for a copy of the internal auditors report but Murphy declined to provide the report stating that it was unnecessary because no action was required. (Twisdale Dep., Vol. I, at 235-36; Ex. 31).
74. Twisdale took the internal auditor's report to be favorable of what he was doing. (Twisdale Dep., Vol. I, at 236, 239).
75. No action was taken as a result of the internal audit report. (Twisdale Dep., Vol. I, at 238-39).

D. The PRP Review

76. The Problem Resolution Program ("PRP") intervenes on behalf of taxpayers to Resolve examination issues or collection issues. (Twisdale Dep., Vol. I, at 241).
77. On April 16, 1998, Damron told Twisdale that the PRP was to be subjected to a Review. (Twisdale Dep., Vol. I, at 241-44).
78. Damron initiated the PRP review in Twisdale's branch, which at the time was Experiencing an increase in inventory, aging of the inventory, and lack of staff. (Twisdale Dep., Vol. I, at 248-49; Ex. 35).

79. Pat Shaffner ("Shaffner"), Leisa Smith ("Smith") and Brett Brukhardt ("Burkhardt") were assigned to conduct the review of the PRP. (Twisdale Dep.,Vol. I, at 254-55; Ex. 37).
80. Shaffner, a GS-13, previously held the position of section chief of QMB. (Twisdale Dep., Vol. I, at 255-56).
81. Burkhardt, a GS-11 or 12, was an assistant taxpayer advocate and in that capacity reviewed and approved responses to PRP cases. (Twisdale Dep., Vol. I, at 255-56).
82. Smith was an examination group manager, GS-13. (Twisdale Dep., Vol. I, at 256).
83. Twisdale takes issue with the experience level of these individuals to undertake the PRP review, but admits that as a regional analyst he conducted a peer review in Los Angeles and reviewed the work of higher grade employees. (Twisdale Dep., Vol. I, at 261).
84. Moreover, as a labor relations specialist, and now as an assistant taxpayer advocate, Burkhardt has reviewed items that may have been completed by someone who was a higher grade or evaluated areas which were the ultimate responsibility of a Branch or Division Chief. (Twisdale Dep., Vol, I, at 269; Ex. 40).
85. On June 19, 1998, the team issued its report detailing its findings in connection with the PRP review, and making several recommendations to improve the PRP program. (Ex. 37).
86. On June 28, 1998, Murphy became the new Division Chief and declined to make the recommendations set forth in the PRP report. (Twisdale Dep., Vol. I, at 275-76, 279).
87. Murphy chose not to act on the PRP report because she had other ideas about the organization of the PRP. (Deposition of Mary Murphy ("Murphy Dep.") at 134).
88. Murphy did not retract the one recommendation that was in place before her arrival, that is, the placement of a PRP coordinator. (Murphy Dep. At 137-38).

89. Twisdale lost no pay, grade, or benefits as a result of the PRP report, and other than the PRP being reassigned, he lost no other duties or responsibilities. (Twisdale Dep., Vol. I, at 289-90).

E. Elevation/Reassignment of the Disclosure Office

90. In November or December 1998, Murphy elevated the Disclosure Office to a position under her immediate control. (Twisdale Dep., Vol. I, at 285).
91. Murphy and Twisdale had discussed the Disclosure Office's location within the division soon after Murphy's arrival. (Twisdale Dep., Vol. I, at 284).
92. In some districts the Disclosure Office is at the division level and in others it is at the director's staff level. Both of these levels were higher than Twisdale's level. (Twisdale Dep., Vol. I, at 284).

F. Denial of Reassignment of Field Branch Chief Position

93. Murphy denied Twisdale's request to be reassigned back to a Field Branch Chief position. (Twisdale Dep., Vol. I, at 297).
94. Such a reassignment would not have resulted in a higher salary or a higher grade. (Twisdale Dep., Vol. I, at 298).
95. Twisdale had previously left the field branch position because there was a reorganization and Whaley had asked Twisdale to be the QMB Chief. (Twisdale Dep., Vol. II, at 203).
96. Rather than simply reassign Twisdale to the position, Murphy told Twisdale that she was going to announce the position competitively. (Twisdale Dep., Vol. I, at 300).
97. Twisdale never applied for the position. (Twisdale Dep., Vol. I, at 300).

98. Jeanie Fisher ("J. Fisher"), a white female, was ultimately chosen for the Branch Chief position. (Twisdale Dep., Vol. I, at 301).

G. Madison's Referral of Twisdale to Inspection

99. On March 24, 1999, Murphy advised Twisdale that E. Madison had requested that the inspection service investigate Twisdale for allegedly accessing an unauthorized, secured area. (Twisdale Dep., Vol. I, at 95; Twisdale Dep., Vol. II, at 7-9).
100. The incident underlying this request occurred as Twisdale was about to leave the building with another employee, Brian Sweet. (Twisdale Dep., Vol. II, at 13-15).
101. On their way out of the building, Twisdale noticed that the door to the Collection office was wide open to an area which was previously an open office for taxpayers to come in to resolve collection matters. (Twisdale Dep. Vol. H, at 13-15).
102. Twisdale took a closer look and stepped inside the doorway. (Twisdale Dep., Vol II, at 12-15).
103. Twisdale noticed sealed boxes against the wall of the room but has no idea what was inside the boxes. (Twisdale Dep., Vol. II, at 16).
104. Murphy advised Twisdale on March 24 that she had received an inspection referral sheet clearing him of any wrongdoing. (Twisdale Dep., Vol. I, at 95).
105. Rogers could have disciplined Twisdale in connection with E. Madison's allegation even without the referral but he did not. Twisdale lost no pay or benefits as a result of the referral to inspection. (Twisdale Dep., Vol. II, at 20).

H. Acting Assignments

106. From February 1998 through June 1998, while Damron was his supervisor, Twisdale was never placed in the position of an Acting supervisor. (Twisdale Dep., Vol. II, at 22).

107. Twisdale never even asked for Acting assignments during this time. (Twisdale Dep., Vol. II, at 22).

108. Likewise, Twisdale never sought to be Acting when Whaley was his supervisor, from February 1994 to February 1998. (Twisdale Dep., Vol. II, at 22-23).

109. Although he did not ask for Acting assignments under Whaley, Whaley did assign him to serve in an Acting capacity five to ten times during the holidays in 1994; the longest these assignments lasted were a little over a week. (Twisdale Dep., Vol. II, at 22-23, 37-38).

110. In July 1998, Twisdale requested Acting assignments from Murphy. (Twisdale Dep., Vol. II, at 29, 190).

111. By Twisdale's account, he was assigned Acting duty four times under Murphy. (Twisdale Dep., Vol. II, at 31-32).

112. During this same time frame, Karen Turner, a white female; J. Fisher, a while Female; Shaffner, a white female; and Joe Wilson, a white male, were assigned Acting duty at a higher frequency than Twisdale. (Twisdale Dep., Vol. II, at 32).

113. On August 2-6, 1999, Twisdale was asked to act for Murphy. (Twisdale Dep.,17 Vol. II, at 56-57; Dep. Ex. 45).

114. Also on August 2, Twisdale submitted a memo to Murphy entitled, "Continued Acts of Retaliation," in which he alleged that during a meeting Shaffner and Belofsky(1) made gestures of "disbelief" after Twisdale asked a question at a Meeting that was similar to a question Shaffner had just asked. (Ex. 44 at 1).

115. In this memo. Twisdale stated, "This event and other acts of harassment that discredit my abilities and character and prevent the resolution of my issues only documents a concerted effort by Mr. Rogers, you, and

select others as continued acts of retaliation for my involvement in the EEO process. It is my duty to inform you that these acts of retaliation have had a severe impact to my job attitude, performance, health and personal life." (Ex. 44 at 2).

116. After reading Twisdale's August 2 memo, Murphy sought out Rogers's advice and they concurred that Twisdale's acting assignment should be revoked. (Murphy Dep. At 165, 168, 180).

117. On August 3, 1999, Twisdale received a voice mail from Murphy revoking the acting assignment. (Twisdale Dep., Vol. II, at 77).

118. There are no agency regulations such as the Internal Revenue Service Manual or National Agreement Between IRS, Internal Revenue Service, and National Treasury Employees Union that specifically deal with or govern the issue of the removal of Branch Chiefs from acting positions. (Twisdale Dep., Vol. II, at 67: Ex. 46).

I. Twisdale's Promotion While Being Supervised by Murphy

119. Twisdale was eligible for a promotion to a GS-15 in 1993. (Twisdale Dep., Vol. II, at 37).

120. Twisdale applied for approximately three GS-15 positions within the IRS and approximately six to eight GS-15 positions outside the IRS. (Twisdale Dep., Vol. II, at 50-51).

121. Twisdale began applying for these positions in 1998 but was never selected for any of the GS-15 positions. (Twisdale Dep., Vol. II, at 52).

122. Twisdale also applied for approximately four or five GS-14 positions within the IRS but was never selected. (Twisdale Dep., Vol. II, at 52).

123. This changed in approximately June/July 2000, when Twisdale was selected for the position of Field Compliance Territory Manager for Small Business/Self-

Employment, GS-15, a second level management position in West Virginia, (Twisdale Dep., Vol. II, at 83-84; Ex. 50).

124. This GS-15 position was a promotion, an increase in pay, and an increase in duties and responsibilities. (Twisdale Dep., Vol. II, at 123).

125. Twisdale's selection for promotion while supervised by Murphy came after Twisdale participated on five national task forces or national teams, more than with any of his other supervisors prior to Murphy. (Twisdale Dep., Vol II, at 94; Ex. 50).

126. Twisdale does not know if any other individual supervised by Murphy had participated in more task forces than he did. (Twisdale Dep., Vol. II, at 94).

127. On Friday, October 6, 2000, following his selection for promotion, Twisdale sent Murphy an electronic mail message stating in relevant part, "I would like to thank you for the recognition provided. My success could not have been possible without your support. (Twisdale Dep., Vol. II, at 107-08; Ex. 52).

128. In February 1997, while supervised by Whaley, Twisdale received a $300 performance award. (Twisdale Dep., Vol. II, at 79; Ex. 47).

129. In contrast, on October 25, 1998, Twisdale received a $1,050 performance award, which award covered a time period in which Murphy supervised Twisdale. (Twisdale Dep., Vol. II, at 80; Ex. 48).

130. In November 1999, Twisdale received a $1,250 performance award. (Ex. 49).

131. The award covered a time period in which Murphy was his supervisor. (Twisdale Dep., Vol. II, at 81; Ex. 49).

132. This may have been the biggest performance award Twisdale ever received. (Twisdale Dep., Vol. II, at 82).

III. Discussion

A. Retaliation

In order to state a prima facie case of retaliation, a plaintiff must show: "(1) that [he] engaged in statutorily protected activity; (2) that he suffered an adverse employment action; and (3) that there is a causal link between the protected activity and the adverse action." Essex v. United Parcel Service., 111 F.3d 1304, 1309 (7th Cir. 1997). A plaintiff may demonstrate such a link through evidence that the alleged adverse action followed "on the heels" of the protected activity. Dey v. Colt Constr. & Dev. Co., 28 F.3d 1446, 1458 (7th Cir. 1994).

The acts of retaliation complained of by "Twisdale include: (1) the internal audit and threatened reassignment of employees; (2) the removal of the Disclosure Office from his supervision; (3) not being assigned acting assignments; (4) attempted intimidation by the Division Chief; (5) the handling of the Madison investigation; (6) the Field Branch Chief position being filled competitively; and (7) the PRP review. Defendant contends none of these acts amounts to an adverse employment action.

An adverse employment action is a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998) (citing Crady v. Liberty Nat. Bank & Trust Co. of Ind., 993 F2d 132, 136 (7th Cir. 1993)). Thus, general unhappiness or dissatisfaction in the workplace does not constitute an actionable adverse employment action. Smart v. Ball State University, 89 F.3d 437, 441 (7th Cir. 1996) (stating "not everything that makes an employee unhappy is an actionable adverse action."). Rather, the alleged conduct must have some "tangible job consequence." Sweeney v. West, 149 F.3d 550, 556 (7th Cir. 1998).

The actions of which Twisdale complains do not amount to an adverse employment action. Indeed, the only action that even arguably affected Twisdale's job duties was the removal of the Disclosure Office from his second-level supervisory authority. However, Twisdale also had second-level supervisory authority over several other functions, as well as primary supervision over yet other functions. Thus, removal of the Disclosure Office does not constitute an adverse employment action in and of itself because supervision of the Disclosure Office was merely one facet of Twisdale's employment. Crady, 993 F.2d at 136 (holding that change in title from assistant vice-president and manager to one branch of a bank to a loan officer position at a different branch did not by itself constitute an adverse employment action). Moreover, federal courts do not sit as a "super-personnel department" to reexamine every employment related decision made by employers, such as the reassignment of a specific job duty. See, e.g., Foster v. Arthur Andersen, LLP, 168 F3d 1029, 1035 (7th Cir. 1999).

Further, the only purported evidence identified by Twisdale regarding the significance of the removal of supervision of the Disclosure Office is his own contention that there were several other districts in which the Disclosure Office was under the direct supervision of his branch-level counterparts. (Pl. Resp. at 22; Ex. C). However, his statement is not admissible evidence since he has failed to show that he has sufficient personal knowledge to testify to that fact.

Finally, Twisdale himself admits that each of these events in isolation do not amount to an adverse employment action. (Pl. Resp. at 18). Twisdale thus argues that the combination of these events had an adverse impact on his career. This argument fails for two reasons. First, Twisdale himself does not cite to controlling Seventh Circuit case law which supports this proposition. Second, even were this the law,

these events did not have a cumulative effect on his career that was adverse. In fact, it is undisputed that Twisdale did not experience any loss in pay, grade or benefits. Rather, he received the most generous performance awards of his career, served on five national task forces, and was promoted to his current GS-15 level management position. These undisputed facts warrant summary judgment in favor of the Defendant on Twisdale's retaliation claim.

B. Hostile Work Environment

A plaintiff may also establish a Title VII violation by proving that discrimination based on race has created a hostile or abusive work environment. Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 66 (1986). The harassment must be so "severe or pervasive" as to "alter the conditions of [the plaintiff's] employment and create an abusive working environment.''' Id. At 67 (1986) (quoting Henson v. Dundee, 682 F2d 897, 902 (11th Cir. 23 1982)). Whether the work environment can correctly be termed "hostile" turns on a variety of factors. These include: "the frequency of the discriminatory conduct; its severity; whether it is psychologically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Systems, Inc. 510 U.S. 17, 23 (1993). The court must also "assess the impact of the harassment upon the plaintiff's work environment both objectively and subjectively." Hostetler v. Quality Dining, Inc., 218 F3d 798, 807 (7th Cir. 2000). Thus,the court considers "not only the actual effect of the harasser's conduct on his victim, but also the effect similar conduct would have on a reasonable person." Dey v. Colt Construction & Developmetn Co., 28 F3d 1446, 1454 (7th Cir. 1994) (citing Saxton v. American Tel. & Tel. Co., 10 F3d 526, 534 (7th Cir. 1993)). The acts of which Twisdale complains include (1) being subjected to an audit; (2) being threatened with the removal of the Disclosure

Office; (3) undercutting his authority to address Madison's performance problems and misconduct; and (4) the denial of acting assignments. (Pl. Resp. at 30-31). These acts simply do not rise to the level of an actionable hostile work environment claim. Indeed, Twisdale himself does not explain how any of these actions, either individually or collectively, constitute a hostile work environment.

Twisdale's claim is further flawed by his failure to link these acts to his race. In order to succeed, Twisdale must show that the evidence as a whole creates a reasonable inference that he was discriminated against because of his race. See Hardin v. S.C. Johnson & Son, Inc., 167 F3d 340, 345 (7th Cir. 1999). Here, the record is devoid of any facts suggesting that any of the specific conduct identified by Twisdale is because of his race. Accordingly, the court finds Defendant's motion should be granted on Twisdale's hostile work environment claim.

IV. Conclusion

For the reasons stated above, the court GRANTS Defendant's Motion for Summary Judgment.

SO ORDERED this 27 day of February 2002.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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